

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Satellite Delivery of Network Signals)	CS Docket No. 98-201
to Unserved Households for)	RM No. 9335
Purposes of the Satellite Home)	RM No. 9345
Viewer Act)	
)	
Part 73 Definition and Measurement)	
of Signals of Grade B Intensity)	

To: The Commission

COMMENTS OF MT. MANSFIELD TELEVISION, INC.

Mt. Mansfield Television, Inc., the licensee of WCAX-TV, Burlington, Vermont ("Mt. Mansfield"), respectfully submits these comments in the above-captioned proceeding.

Introduction

As the CBS affiliate in the Burlington-Plattsburgh market, Mt. Mansfield will be substantially affected by the outcome of this proceeding. WCAX provides predicted Grade B service to the northern two-thirds of Vermont as well as to significant portions of New Hampshire and upstate New York. For over 40 years, Mt. Mansfield has provided continuous, award-winning local news and other programming to viewers in these communities. In recent years, however, the Burlington-Plattsburgh market has been inundated with outside-market CBS network signals delivered by satellite direct-to-home ("DTH") providers -- including signals from as far away as San Francisco and Washington, D.C. None of these outside sources, of course, provides local Vermont news, weather, or other informational programming.

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Argument

In Vermont, as elsewhere, “many, if not most, [DTH] subscribers do not live in ‘unserved households’ under any interpretation of that term.” Notice ¶ 15. The Florida and North Carolina district court decisions described in the Commission’s notice confirm this fact.^{1/} In response to these findings of illegal conduct, DTH providers have now asked the Commission to rewrite the Satellite Home Viewer Act (“SHVA”). NRTC and EchoStar urge the Commission to revise its long established standard for predicting Grade B coverage, and to do so for the specific purpose of legalizing practices that have been enjoined by these two courts. To the same end, they also ask the Commission to abandon its well established rules for conducting field strength measurements. *See* 47 C.F.R. § 73.686.

These are bizarre requests. The statutory standard at issue here is “an over-the-air signal of Grade B intensity (as defined by the Federal Communications Commission).”^{2/} Mt. Mansfield agrees with NAB and the Television Affiliates Associations that Congress did not intend for this standard to fluctuate over time. But in any event, Congress clearly did not intend for the Commission to change Grade B signal levels, or to abandon its long established standards for predicting and measuring signal strength, solely in order to satisfy DTH providers’ desire to legalize their patently unlawful conduct under the statute as now written. The suggestion that Commission may take steps to enable 15 to 20 percent of currently ineligible households to

^{1/} See CBS, Inc. v. PrimeTime 24 Joint Venture, 9 F. Supp. 2d 1333, 1344 (S.D. Fla. 1998) (“Plaintiffs’ evidence indicates that PrimeTime 24 is broadcasting copyrighted network programming to hundreds of thousands of subscribers who receive a signal of Grade B intensity as defined by Congress”). See also Notice ¶ 8 (quoting North Carolina decision).

^{2/} 17 U.S.C. § 119(d)(10).

receive DTH service -- under a statute that lies outside the Commission's purview -- seems plainly inconsistent with legislative intent. *See* AP, FCC Eyes Satellite Programming, Nov. 17, 1998.

The Commission is, of course, certainly free to advise Congress as to any changes it believes are warranted in the SHVA. But Mt. Mansfield strongly urges the Commission *not* to recommend to Congress any change to the Commission's long established definition of Grade B service or procedures for predicting or measuring field strength -- policies that the satellite industry accepted in return for its obtaining a statutory compulsory license. Such changes would seriously threaten the continued ability of stations like WCAX to provide their communities with high quality, free, local informational programming that has served the public interest for the past 40 years. They would thus be inconsistent with the policy of the SHVA "to protect network-affiliate relationships and to foster localism in broadcasting." Notice ¶ 36.

The attached coverage calculations prepared by Dataworld, Inc. measure the Longley-Rice predicted Grade B coverage area of WCAX, which is the presumptive standard adopted by the Miami court for SHVA purposes (subject to rebuttal by actual measurement at any given household). They also measure the Longley-Rice predicted Grade A coverage area of the station, which appears to be the outer limit of what the Commission now contemplates as a possible change in response to the NRTC and EchoStar petitions. *See* Notice ¶ 28. Such a change would add *almost 100,000* households within WCAX's service area to those presumptively eligible for DTH-supplied CBS service. And it would increase such presumptively eligible households from

only 15% to *over 44%* of the entire Burlington-Plattsburgh DMA.^{3/}

The substantial diversion of local CBS network viewing threatened by such a change would have an obvious impact on WCAX's ratings, and thus on its advertising revenues and financial prospects. See Notice ¶ 27. But this impact would extend far beyond Mt. Mansfield itself. DTH viewers throughout Vermont would no longer tune to WCAX's local news and weather (including, for example, school closings), EAS alerts, local public affairs programming, local political advertising and candidate forums, and local PSAs. And by disrupting the advertising revenue base associated with WCAX's programs, such a change would also inevitably diminish the quality of WCAX's local news and other programs, as well as its ability to afford popular syndicated programs.

The cumulative nationwide effect of such a change to the terms of the copyright license that the satellite industry accepted would be to impair as well the CBS network-affiliate relationship, and its proven ability over many years to provide popular news, sports, and entertainment programming. Indeed, as NAB and the Television Affiliates Associations make clear in their comments, at the heart of this proceeding is the long term viability of the network-affiliate relationship. On the other hand, as the Commission has recognized (Notice ¶ 43), the prospect of a local-into-local technology may well make jeopardizing that relationship wholly

^{3/} There are 292,300 television households in the counties comprising the Burlington-Plattsburgh DMA. 1998 Television & Cable Factbook A-1181. Based on the Dataworld calculations, 249,556 household units in these counties receive Longley-Rice Grade B service. Thus, only the remaining 42,744 (14.6%) are now presumptively eligible for DTH-supplied CBS service. Only 163,491 household units in these counties, however, receive Longley-Rice Grade A service -- leaving 128,809 households, or over 44% of the market.

unnecessary, even if new advanced antenna designs do not.^{4/} Mt. Mansfield urges the Commission to reject the proposals of DTH providers, and to make no changes in its established policy with respect to defining, predicting, and measuring Grade B service.

Respectfully submitted,

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December 11, 1998

^{4/} See Leslie Canley and Frederic M. Biddle, "Antennae Attract Viewers to Satellite TV," Wall St. J., Dec. 1, 1998, at B1.



WCAX Coverage Analysis

December 08, 1998

County	State	County total		F(50,50,50) Grade B				F(50,50,50) Grade A *				% Change	
		POP	HU	POP	%	HU	%	POP	%	HU	%	POP	HU
Oxford County	ME	52,602	29,689	254	0.5	256	0.9	0	0.0	0	0.0	100.0	100.0
Belknap County	NH	49,216	30,306	63	0.1	28	0.1	0	0.0	0	0.0	100.0	100.0
Carroll County	NH	35,410	32,146	150	0.4	111	0.3	0	0.0	0	0.0	100.0	100.0
Cheshire County	NH	70,121	30,350	520	0.7	261	0.9	0	0.0	0	0.0	100.0	100.0
Coos County	NH	34,828	18,712	10,271	29.5	5,614	30.0	521	5.1	431	7.7	94.9	92.3
Grafton County	NH	74,929	42,206	35,458	47.3	16,676	39.5	3,499	9.9	1,932	11.6	90.1	88.4
Hillsborough County	NH	336,073	135,622	57	0.0	59	0.0	0	0.0	0	0.0	100.0	100.0
Merrimack County	NH	120,005	50,870	782	0.7	565	1.1	0	0.0	0	0.0	100.0	100.0
Strafford County	NH	104,233	42,387	243	0.2	158	0.4	0	0.0	0	0.0	100.0	100.0
Sullivan County	NH	38,592	19,532	6,091	15.8	2,696	13.8	169	2.8	72	2.7	97.2	97.3
Clinton County	NY	85,969	32,190	85,216	99.1	31,592	98.1	80,611	94.6	29,529	93.5	5.4	6.5
Essex County	NY	37,152	21,493	32,304	87.0	17,832	83.0	16,930	52.4	9,138	51.2	47.6	48.8
Franklin County	NY	46,540	21,962	12,151	26.1	6,251	28.5	6	0.0	67	1.1	100.0	98.9
Hamilton County	NY	5,279	8,234	51	1.0	156	1.9	0	0.0	0	0.0	100.0	100.0
Saratoga County	NY	181,276	75,105	1,703	0.9	503	0.7	0	0.0	0	0.0	100.0	100.0
Schenectady County	NY	149,285	62,769	11	0.0	5	0.0	0	0.0	0	0.0	100.0	100.0
St. Lawrence County	NY	111,974	47,521	430	0.4	208	0.4	0	0.0	0	0.0	100.0	100.0
Warren County	NY	59,209	31,737	5,323	9.0	3,928	12.4	437	8.2	352	9.0	91.8	91.0
Washington County	NY	59,330	24,216	4,542	7.7	2,242	9.3	670	14.8	346	15.4	85.2	84.6
Addison County	VT	32,953	14,022	31,930	96.9	13,237	94.4	16,949	53.1	6,856	51.8	46.9	48.2

* Percentages shown relative to F(50,50,50) Grade B coverage

WCAX Coverage Analysis

December 08, 1998

County	State	County total		F(50,50,50) Grade B				F(50,50,50) Grade A *				% Change	
		POP	HU	POP	%	HU	%	POP	%	HU	%	POP	HU
Bennington County	VT	35,845	18,501	82	0.2	53	0.3	0	0.0	0	0.0	100.0	100.0
Caledonia County	VT	27,846	13,449	27,631	99.2	13,351	99.3	7,620	27.6	4,043	30.3	72.4	69.7
Chittenden County	VT	131,761	52,095	131,761	100.0	52,095	100.0	131,482	99.8	51,975	99.8	0.2	0.2
Essex County	VT	6,405	4,403	3,977	62.1	2,756	62.6	348	8.8	279	10.1	91.2	89.9
Franklin County	VT	39,980	17,250	39,713	99.3	17,095	99.1	34,101	85.9	14,415	84.3	14.1	15.7
Grand Isle County	VT	5,318	4,135	5,318	100.0	4,135	100.0	5,318	100.0	4,135	100.0	0.0	0.0
Lamoille County	VT	19,735	9,872	19,735	100.0	9,872	100.0	19,483	98.7	9,728	98.5	1.3	1.5
Orange County	VT	26,149	12,336	21,761	83.2	10,179	82.5	5,470	25.1	2,509	24.6	74.9	75.4
Orleans County	VT	24,053	12,997	23,854	99.2	12,852	98.9	9,245	38.8	5,005	38.9	61.2	61.1
Rutland County	VT	62,142	31,181	7,851	12.6	4,555	14.6	437	5.6	930	20.4	94.4	79.6
Washington County	VT	54,928	25,328	54,928	100.0	25,328	100.0	49,464	90.1	21,903	86.5	9.9	13.5
Windham County	VT	41,588	25,796	101	0.2	587	2.3	0	0.0	0	0.0	100.0	100.0
Windsor County	VT	54,055	29,849	16,444	30.4	9,054	30.3	1,600	9.7	975	10.8	90.3	89.2
Total		2,214,781	1,028,261	580,706	26.2	264,290	25.7	384,360	66.2	164,620	62.3	33.8	37.7

* Percentages shown relative to F(50,50,50) Grade B coverage